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12 U.S. Bank National Association, Successor in
Interest to the Federal Deposit Insurance
13 Corporation as Receiver for Downey Savings
and Loan Association, F.A.

14
15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 CARLA GIESEN, an individual; and
BRYAN GIESEN, an individual,

18 Plaintiffs,

19 v.

20 U.S. BANK LOAN SERVICES, INC.,
21 a Delaware Corporation;
HOMECOMINGS FINANCIAL
22 SERVICES, LLC (f/k/a Homecomings
Financial Network, Inc.), a Delaware
23 Limited Liability Company; WALL ST.
MORTGAGE, INC., a California
24 Corporation; and DOES 1 through 50,
inclusive,

25 Defendants.

Case No. 09-cv-7122-GAF (SSx)

**U.S. BANK NATIONAL
ASSOCIATION, SUCCESSOR IN
INTEREST TO THE FEDERAL
DEPOSIT INSURANCE
CORPORATION AS RECEIVER
FOR DOWNEY SAVINGS AND
LOAN ASSOCIATION, F.A.'S
NOTICE OF MOTION AND
MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR FAILURE TO
STATE A CLAIM**

Date: 12/21/09
Time: 9:30 a.m.
Crtrm.: 740
Hon. Gary A. Feess

[Complaint Filed: July 27, 2009]

1 **TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 PLEASE TAKE NOTICE that on December 21, 2009, at 9:30 a.m., or as
4 soon thereafter as this matter may be heard in Courtroom 740 before the Honorable
5 Gary A. Feess of the above-entitled Court, located at 255 East Temple Street, Los
6 Angeles, CA 90012, Defendant U.S. Bank National Association, Successor in
7 Interest to the Federal Deposit Insurance Corporation as Receiver for Downey
8 Savings and Loan Association, F.A. ("Defendant") will and hereby does move the
9 Court pursuant to Federal Rules of Civil Procedure 12(b)(6) for an order dismissing
10 Plaintiffs' First Amended Complaint for failure to state a claim upon which relief
11 may be granted.

12 This Motion is based upon this Notice of Motion and Motion, Defendant's
13 Memorandum of Points and Authorities in Support thereof filed concurrently
14 herewith, and all of the pleadings, records, and papers on file herein, as well as such
15 other oral argument as may be presented at the hearing on this Motion.

16 This Motion is made in compliance with Local Rule 7-3. Counsel for the
17 Defendant repeatedly attempted to reach Stephen P. Collette (counsel for Plaintiffs)
18 by telephone and email in an effort to meet and confer under the Local Rules.
19 Despite multiple telephone calls, the telephone number for Mr. Collette listed in the
20 caption of the First Amended Complaint and with the State Bar of California has
21 always returned a busy signal. Nor has Mr. Collette responded to counsel's email
22 messages attempting to arrange a time to meet and confer. Given Defendant's
23 impending responsive pleading deadline, counsel for Defendant cannot wait any
24 longer to bring this Motion.

1 November 20, 2009

2 SHEPPARD MULLIN RICHTER & HAMPTON LLP

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4 By /s/ J. Barrett Marum
5 DANA J. DUNWOODY
6 J. BARRETT MARUM

7 Attorneys for Defendant
8 U.S. Bank National Association, Successor in
9 Interest to the Federal Deposit Insurance
10 Corporation as Receiver for Downey Savings
11 and Loan Association, F.A.
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